

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-850

UNITED STATES OF AMERICA,

Petitioner,

—v.—

RICHARD J. MARA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

INDEX

	Page
Relevant docket entries	1
Government petition for court order directing Richard J. Mara to furnish exemplars of his handwriting and printing before and to the September 1971 Grand Jury	3
Transcript of proceedings before Judge Edwin A. Robson on September 28, 1971	6
Petition to stay order and set bail	13
Emergency motion for stay of commitment and for bond pending appeal	16
Order allowing certiorari '	20

¹ The opinion and the judgment of the court of appeals, the district court order of September 28, 1971 directing Mara to furnish the exemplars, and the order of judgment and commitment holding Mara in contempt and directing that he be committed to the custody of the United States Marshall were printed at pp. 18-21 of the appendix to the petition for a writ of certiorari. The sealed affidavit of F.B.I. agent William Buchanan has been forwarded to the Court; respondent has not seen it.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
Sept. 28, 1971	Filed Government's Petition for court order directing Richard J. Mara, also known as Richard J. Marasovich, to furnish exemplars of his handwriting and printing before and to the September 1971 Grand Jury.
Sept. 28, 1971	Enter order directing Richard J. Mara to furnish to Grand Jury such exemplars of his handwriting as Grand Jury deems necessary. DRAFT
	Order affidavit of William Buchanan impounded until further order of court—Robson, J.
Sept. 28, 1971	Issued 2 certified copies order to U.S. Marshal.
Sept. 28, 1971	Filed Affidavit of William L. Buchanan (impounded—in vault).
Sept. 28, 1971	Order respondent Richard J. Mara in direct and continuing contempt of court for failure to obey order of Sept. 28, 1971 and order said respondent committed to custody of the U.S. Marshal until such time as said order is obeyed— DRAFT —Robson, J.
Sept. 28, 1971	Issued 2 certified copies order to U.S. Marshal
Oct. 8, 1971	Filed Notice and Petition to stay order and set bail.
Oct. 8, 1971	Petition for a stay order and setting of a bond is heard and is denied—Robson, J.
Oct. 13, 1971	Filed Notice of Appeal of Richard J. Mara
Oct. 13, 1971	Filed Designation of Record on Appeal.

DATE	PROCEEDINGS
Nov. 12, 1971	Certified and transmitted record on appeal U.S.C.A.
Dec. 2, 1971	Filed Opinion of U.S.C.A. (71-1740).
Dec. 2, 1971	Filed Mandate of U.S.C.A.
Dec. 2, 1971	Records returned from U.S.C.A.
Dec. 28, 1971	Filed Request of U.S. Attorney for entire record on appeal be transmitted to Clerk of Supreme Court, Washington, D. C.
Dec. 27, 1971	Enter order for leave to withdraw record for use in preparing Government's Petition for Writ of Certiorari to be filed in the Supreme Court—Austin, J.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

[Docketed]

No. 71 GJ 4060

[Filed Sep. 28, 1971, M. Stuart Cunningham, Clerk]

IN RE: RICHARD J. MARA, also known as,
RICHARD J. MARASOVICH, a witness
before the September 1971 Grand Jury

**GOVERNMENT'S PETITION FOR COURT ORDER DIRECTING
RICHARD J. MARA, ALSO KNOWN AS, RICHARD J. MARA-
SOVICH, TO FURNISH EXEMPLARS OF HIS HANDWRITING
AND PRINTING BEFORE AND TO THE SEPTEMBER 1971
GRAND JURY**

The United States of America by WILLIAM J. BAUER, United States Attorney for the Northern District of Illinois petitions the court for an order directing respondent, Richard J. Mara, also known as, Richard J. Marasovich, to furnish before and to the September 1971 Grand Jury of the United States District Court for the Northern District of Illinois, Eastern Division, such exemplars of respondent's handwriting and printing as the said Grand Jury deems necessary, and in support thereof states the following:

1. The September 1971 Grand Jury for the Northern District of Illinois, Eastern Division, is now conducting an investigation of alleged illegal activities in said District; said investigation involves possible violations of Title 18, United States Code, Sections 371 and 659. Richard J. Mara, also known as, Richard J. Marasovich, has been subpoenaed by said Grand Jury and fully advised that he is a potential defendant in its investigation.
2. It is essential and necessary to the aforesaid Grand Jury investigation that Richard J. Mara, also known as,

Richard J. Marasovich, furnish before and to the said Grand Jury exemplars of his handwriting and printing. Such exemplars will be used solely as a standard of comparison in order to determine whether the witness is the author of certain writings.

3. Respondent, Richard J. Mara, also known as Richard J. Marasovich, appeared pursuant to subpoena before the September 1971 Grand Jury on September 23, 1971. At that time the respondent was directed by the foreman of the Grand Jury to furnish handwriting exemplars out of the presence of the Grand Jury, under the supervision of the Grand Jury's duly designated agents. The respondent refused, asserting constitutional privilege.

4. Respondent, Richard J. Mara, also known as, Richard J. Marasovich, was then directed by the foreman of the Grand Jury to return and appear before the Grand Jury at 9:30 a.m. on September 28, 1971. At that time the respondent was again directed by the foreman to furnish handwriting exemplars in the same manner that he had been directed earlier. The respondent again refused, and again asserted constitutional privilege.

5. The government, petitioner in this matter, contends that mere handwriting and printing exemplars are identifying physical characteristics outside the protection of the Fifth Amendment. Petitioner further contends that respondent has no constitutional privilege whatsoever to refuse to furnish exemplars of his handwriting and printing as demanded by the Grand Jury. *Gilbert v. California*, 388 U.S. 263, 265-67 (1967); *Schnerber v. California*, 384 U.S. 757-61, 64 (1966); *United States v. Doe*, 405 F.2d 436, 437-38 (2nd Cir. 1968).

6. Moreover, for reasons stated in the affidavits submitted to this court for in camera inspection, the exemplars sought do not constitute an unreasonable seizure under Fourth Amendment standards. See: *In Re Dionisio*, 442 F.2d 276, 80 (7th Cir. 1971).

WHEREFORE, petitioner prays that this court enter an order directing the respondent Richard J. Mara, also known as Richard J. Marasovich to furnish before and to the September 1971 Grand Jury of the United States District Court for the Northern District of Illinois, Eastern Division, such exemplars of respondent's handwriting and printing as the Grand Jury deems necessary.

Respectfully submitted,

/s/ William J. Bauer
WILLIAM J. BAUER

MAL:pmh

2

September 28, 1971
Pages 1 to 9.

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 71 GJ 4060

[Received Jun. 27, 1:38 p.m., '72, United States Attorney,
Northern District, Chicago, Illinois]

IN RE: RICHARD J. MARA, also known as,
RICHARD J. MARASOVICH, a witness
before the September 1971 Grand Jury

TRANSCRIPT OF PROCEEDINGS
Before
HON. EDWIN A. ROBSON
Judge

CLAUDE W. YOUKER, JR.
Official Court Reporter
U. S. District Court
United States Court House
Room 2544-A
Chicago, Illinois 60604
312-427-4393

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 71 GJ 4060

IN RE: RICHARD J. MARA, also known as,
RICHARD J. MARASOVICH, a witness
before the September 1971 Grand Jury

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled matter before the Honorable
EDWIN A. ROBSON, Chief Judge of said Court, in his
courtroom at the United States Courthouse, Chicago, Illi-
nois, on Tuesday, September 28, 1971, at the hour of
3:00 o'clock p.m.

PRESENT:

HON. WM. J. BAUER, U. S. Attorney, by
MR. MATHIAS A. LYDON,
Asst. U.S. Attorney,

on behalf of the Petitioner;

MR. ANGELO RUGGIERO,
(134 North LaSalle Street, Room 1400,
Chicago, Illinois 60602),

on behalf of the Respondent.

[fol. 2] (The Court gave attention to other matters on
the call, after which the following proceedings were
had herein, to-wit:)

THE CLERK: 71 Grand Jury 4060, in re Richard
J. Mara, a/k/a Richard J. Marasovich, a witness before
the September 1971 Grand Jury, Government's Petition
for Court Order directing Richard J. Mara, a/k/a Rich-
ard J. Marasovich, to furnish exemplars of his hand-
writing and printing before and to the September 1971
Grand Jury.

THE COURT: Good afternoon, counsel.

Is the respondent present?

MR. LYDON: Good afternoon, your Honor.

THE COURT: Are you appearing as counsel for the respondent?

MR. RUGGIERO: My name is Angelo Ruggiero for the record. I am appearing as counsel for the respondent.

THE COURT: All right. Is the Government ready to proceed?

MR. LYDON: Yes, your Honor. Our motion is a petition seeking a Court Order directing the respondent, Richard J. Mara, a/k/a Richard J. Marasovich, to submit himself for the purpose of obtaining handwriting and [fol. 3] printing exemplars as is more fully set forth in our affidavit which was submitted for the Court's in camera inspection under the standard setup in re Dionisio.

We have a reasonable basis for requesting this information. It does not constitute an unreasonable seizure under the Fourth Amendment standards. In addition, of course, it has no Fifth Amendment privilege as has been established in the Supreme Court case of United States v. Gilbert.

THE COURT: All right. For the purpose of the record, the Court has examined the affidavit which was submitted in camera. It has examined the petition that the Court has before it.

Do you have anything to say on behalf of the respondent?

MR. RUGGIERO: I have not seen the petition, your Honor.

MR. LYDON: Your Honor, I have a copy of the order here. The affidavit was submitted for in camera inspection only.

THE COURT: Yes; I am talking about the petition. Have you seen the petition?

MR. RUGGIERO: No, I have not, your Honor. I [fol. 4] have no documents at all.

THE COURT: Well, you certainly are entitled to examine the petition.

MR. LYDON: Your Honor, copies of the petition have not been—

THE COURT: Will you also sign the United States Attorney's name to the petition?

I will take a five-minute recess so counsel can have an opportunity to examine the petition.

MR. RUGGIERO: Thank you, your Honor.

THE COURT: Recess for five minutes.

(There was a short recess, after which the following further proceedings were had herein, to-wit:)

THE CLERK: 71 Grand Jury 4060, in re Richard J. Mara, et cetera, petition for order directing respondent to furnish exemplars of his handwriting, et cetera.

THE COURT: Have you had an opportunity to examine the petition of the Government?

MR. RUGGIERO: I have, your Honor.

THE COURT: Do you have anything to say for and on behalf of the respondent?

MR. RUGGIERO: Yes, I do, your Honor. I believe that this petition as it is set forth is used solely as a [fol. 5] basis—as they state in Paragraph 2—solely as a standard of comparison in order to determine whether the witness is the author of certain writings and as such it comes clearly under the Dionisio case and also the case of United States v. Bailey, which was an opening rendered by Judge Will in this Court, under the Fourth Amendment as being unreasonable searches and seizures.

I mean, there is no probable cause here because, if there had been probable cause, your Honor, they would have indicted him and it is unreasonable because they seek to get information from him, incriminating evidence from him, where there has been no cause shown. If you just take the facts in United States v. Bailey, which I am sure the Court is aware of, where they wanted to take handwriting exemplars such as they do in this case, what the Government really wanted was obviously handwriting samples to prove its case; and that's exactly what they are doing here.

Judge Will held that, of course, the Court shouldn't—

THE COURT: Well, I might say very emphatically that I disagree with Judge Will. I respect and I admire [fol. 6] him, but we have a difference of opinion on that.

MR. RUGGIERO: Well, of course, your Honor; but we can't, I think, cast aside Dionisio.

THE COURT: I have examined the Dionisio decision and also all the other decisions that are set forth herein. I have examined the affidavit that was filed in camera and the Court is of the opinion that the Government has the right to the handwriting exemplars, that it does not violate any of the constitutional rights that you contend that it violates; and the Court would direct that the respondent furnish handwriting exemplars.

Now, this comes before the September 1971 Grand Jury and if the respondent here fails to furnish the handwriting exemplars, the Court will have no alternative but to incarcerate him for being in contempt of court and that will be until he either furnishes the handwriting exemplars or until the term of this Grand Jury expires.

So, I would ask at this time whether the respondent intends to furnish the handwriting exemplars?

MR. RUGGIERO: My client has instructed me, your Honor, that he will not furnish the handwriting exemplars.

[fol. 7] **THE COURT:** Now, you understand, sir, that your refusal now constitutes contempt of Court and if you persist in that attitude, that the Court has no alternative but to sentence you for contempt, and that will be until you either furnish the handwriting exemplars or until the expiration of this Grand Jury.

Now, understanding that, do you still state that you will refuse to furnish handwriting exemplars?

MR. RUGGIERO: He understands that, your Honor.

THE COURT: You understand that and you still refuse to furnish the handwriting exemplars, do you?

THE RESPONDENT: Yes.

THE COURT: All right, state it so I can hear.

THE RESPONDENT: Yes.

THE COURT: All right, then, the Court will have no alternative but to hold you in contempt of Court and I will enter the order requiring the handwriting exem-

plars. I will order the respondent taken into custody and to be held in custody until he either furnishes handwriting exemplars or until the expiration of this Grand Jury.

Will the United States Attorney prepare the necessary order?

MR. LYDON: Yes, your Honor.

[fol. 8] MR. RUGGIERO: Your Honor, I might make a comment, your Honor, that, of course, this defendant has never seen that in camera affidavit so we do not know what is in that.

THE COURT: It is in camera and it will be impounded and you have the right to have that brought up before the Court of Appeals if necessary.

MR. RUGGIERO: Yes, your Honor, because we have no knowledge, obviously, of what is in there, whether it is reasonable or whether there is probable cause.

THE COURT: I understand. That may be stated and be a part of the record.

All right. Take the respondent into custody.

Are there any other matters to take up with the Court at this time?

MR. LYDON: No, your Honor.

THE COURT: All right. Thank you very much, ladies and gentlemen of the Grand Jury. You are excused.

(Which were all the proceedings had in the above-entitled matter on the day and date aforesaid.)

[fol. 9]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 71 GJ 4060

IN RE: RICHARD J. MARA, also known as
RICHARD J. MARASOVICH, a witness
before the September 1971 Grand Jury

CERTIFICATE

I HEREBY CERTIFY that the proceedings had in the above-entitled matters, before the HONORABLE EDWIN A. ROBSON, Chief Judge of said Court, on Tuesday, September 28, 1971, were reported stenographically under my direct personal supervision, and that the foregoing typewritten transcript, consisting of pages 1 to 8, inclusive, is a true, correct and complete transcript of those portions of the proceedings as were more particularly hereinbefore set forth.

CLAUDE W. YOUKER, JR.
Official Court Reporter
Northern District of Illinois
Eastern Division

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 71 GJ 4060

IN RE: RICHARD J. MARA, also known as,
RICHARD J. MARASOVICH, a witness
before the September 1971 Grand Jury

PETITION TO STAY ORDER AND SET BAIL

Now comes Petitioner, RICHARD J. MARA, also known as RICHARD J. MARASOVICH, a witness before the September 1971 Grand Jury for the Northern District of Illinois, by his Attorney, ANGELO RUGGIERO, and respectfully represents unto this Honorable Court as follows:

1. That he has been subpoenaed by the 1971 Federal Grand Jury and has been advised that he is a potential defendant in its investigation.

2. That petitioner has been requested by said Grand Jury to furnish handwriting and printing exemplars out of the presence of the Grand Jury to the Federal Bureau of Investigation; that he has refused to furnish exemplars of his handwriting and printing; that his refusal on constitutional grounds resulted in the Government's Petition obtaining an order ordering him to furnish said handwriting and printing exemplars.

3. That on September 28, 1971, in accordance with the Government's Petition, RICHARD J. MARA, also known as RICHARD J. MARASOVICH, was held in contempt of Court and incarcerated for the life of the Grand Jury or until such time as he gives his handwriting and printing exemplars.

4. That the order holding RICHARD J. MARA, also known as RICHARD J. MARASOVICH, in contempt of this Honorable Court was based upon an Affidavit or Affidavits which the Court has inspected in camera and which Affidavit or Affidavits neither petitioner or his counsel have seen.

5. That the Petitioner refuses to furnish exemplars of his handwriting and printing on the basis that the order directing him to furnish said exemplars violates his constitutional rights under the Fourth Amendment of the Constitution of the United States, as to unreasonable searches and seizures, the Fifth Amendment of the Constitution of the United States, as to self incrimination and due process of law and the Sixth Amendment of the Constitution of the United States as to right of counsel.

6. That further to compel the witness to report directly to Government agents is without the purview of the functions of the Grand Jury.

7. That it is the intention of your petitioner to appeal the aforementioned orders directing him to furnish exemplars of handwriting and printing and judgment of commitment for contempt of Court, and petitioner appeals with the belief that he will prevail.

8. That this appeal is neither frivolous or taken for delay, and that the petitioner believes that he is entitled to his bond.

WHEREFORE, petitioner, RICHARD J. MARA, also known as RICHARD J. MARASOVICH, prays that the judgment of commitment be stayed and that bond be set pending the appeal of the order of commitment heretofore entered by this Honorable Court.

/s/ Richard J. Mara
RICHARD J. MARA
Also known as
RICHARD J. MARASOVICH
Petitioner

ANGELO RUGGIERO
Attorney for Petitioner
134 North LaSalle Street
Chicago, Illinois 60602
AN 3-6073

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

RICHARD J. MARA, also known as RICHARD J. MARASOVICH, being first duly sworn on oath, deposes and says that he is the Petitioner herein; that he has read the above and foregoing Petition by him subscribed and that the same is true and correct.

/s/ Richard J. Mara

Subscribed and Sworn to before me
this 7th day of October, A.D., 1971.

/s/ [Illegible]
Notary Public

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. ———

RE: RICHARD J. MARA, also known as,
RICHARD J. MARASOVICH, a witness before
the September 1971 Grand Jury

EMERGENCY MOTION FOR A STAY OF COMMITMENT
AND FOR BOND PENDING APPEAL

Now comes the witness-appellant, RICHARD J. MARA, also known as, RICHARD J. MARASOVICH, by his Attorney, ANGELO RUGGIERO, and moves this Honorable Court for a stay order of commitment heretofore entered by the District Court, and for bond pending appeal from the orders entered by the District Court, and in support thereof, states as follows:

1. That the witness is under subpoena to appear before the September 1971 Grand Jury, presently sitting in the Northern District of Illinois.

2. That on September 23, 1971, and September 28, 1971, the witness appeared before the said Grand Jury. Upon appearing before the said Grand Jury, the witness refused to give handwriting and printing exemplars to Government Agents, and did so on the ground of constitutional privilege under the Fourth, Fifth and Sixth Amendments of the United States Constitution, and on the further ground that compelling the witness to report directly to government agents is without the purview of the function of the Grand Jury.

3. That on September 28, 1971, the Government filed a petition with the District Court for an order directing the witness to furnish exemplars of his handwriting and printing before the 1971 Grand Jury, a copy of the Petition which is hereto attached as Exhibit I.

4. That the Government's Petition was based upon Affidavits submitted to the District Court for in camera inspection, the contents of said Affidavits not being known to the witness nor his counsel.

5. That on September 28, 1971, the Court entered an order directing the witness to submit his handwriting and printing exemplars to the 1971 Grand Jury, a copy of the order which is hereto attached and made a part hereof as Exhibit II.

6. That on September 28, 1971, the Court entered an order of judgment and commitment, a copy of the order which is hereto attached and made a part hereof as Exhibit III, committing the witness to the custody of the United States Marshal for the Northern District of Illinois, for contempt of court until such time as the witness shall obey the order heretofore entered directing him to furnish his handwriting and printing exemplars.

7. That the District Court refused to stay the order of commitment and refused to set bond, a copy of the order which is hereto attached and made a part hereof as Exhibit IV.

8. That bond was sought under the following statute: Title III-Recalcitrant witnesses, Section 301, which amends Title 28 United States Code, Section 1826.

9. That the issues raised on appeal are not frivolous nor are they raised for purposes of delay.

10. That important issues of a constitutional nature reaching the Fourth, Fifth and Sixth Amendments of the United States Constitution and the powers of a Grand Jury are involved in this appeal.

11. That in considering whether to grant bond in this matter, the Court is respectfully requested to consider the following:

- (a) That the government seeks handwriting and printing exemplars from the witness based upon Affidavits which have been submitted to the lower Court for its inspection in camera, the contents of which are unknown to witness or his counsel;
- (b) That a subpoena to appear before a Grand Jury is within the province of the Fourth Amendment and that Courts have struck down Grand Jury subpoenas which are unreasonable under the Fourth Amendment of the United States Constitution;

- (c) That compelling a person to furnish handwriting and printing exemplars is as much within the scope of the Fourth Amendment as is compelling him to produce his books and papers;
- (d) That the exemplars herein are sought solely as a standard of comparison to determine whether the witness is the author of certain writings;
- (e) That the Grand Jury is seeking to obtain handwriting and printing exemplars by the use of its subpoena powers because probable cause does not exist for the witness' arrest;
- (f) That the Affidavits inspected by the lower court, in addition, violate witness' constitutional rights under the Fifth Amendment of the United States Constitution, denying him due process of law, in that he is operating in a vacuum, not knowing what the Affidavits contain;
- (g) Additionally, his Fourth Amendment rights as to unreasonable searches under the Fourth Amendment are violated, in that he can not question the validity or the legality of the Affidavits;
- (h) That no warrant is involved herein;
- (i) That the Fourth Amendment bans wholesale intrusion upon personal security, fishing expeditions and searches and seizures which are unreasonable;
- (j) That what the Government seeks is a one man show up of a crime under investigation, in violation of his Sixth Amendment right to counsel; that it uses a Grand Jury subpoena and its own private speculation for an arrest warrant and the accompanying probable cause that should be made to an independent magistrate;
- (k) That the witness was directed to give handwriting and printing exemplars not to the Grand Jury, but to agents of the Government, and that such direction is without the boundaries of the Grand Jury's authority;

- (l) That to preclude counsel for the witness from accompanying him into the Grand Jury Room violates his constitutional right to right of counsel under the Sixth Amendment;
- (m) That an investigation by a Grand Jury does not excuse unreasonableness. The Court should consider the cases of: In Re Antonio Dionisio and Charles Bishop Smith, 442 F2nd 276 (7Cir) (1971); U.S. v. Bailey, 372 F.Supp. 802 (1971); Davis v. Mississippi, 394 U.S. 721 (1969).

WHEREFORE, witness-appellant, RICHARD J. MARA, also known as RICHARD J. MARASOVICH, prays for an order staying the order of commitment and for bond pending appeal.

Respectfully submitted,

ANGELO RUGGIERO
Counsel for witness-appellant

SUPREME COURT OF THE UNITED STATES

No. 71-850

UNITED STATES, PETITIONER

v.

IN RE SEPTEMBER 1971 GRAND JURY, RICHARD J. MARA,
a/k/a RICHARD J. MARASOVICH

ORDER ALLOWING CERTIORARI—Filed May 30, 1972

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and is to be argued with No. 71-229.

